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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/508,800

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Anthony Visser

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HARNESS, DICKEY & PIERCE, P.L.C.

P.O. BOX 8910

RESTON, VA 20195

EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

09/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/508,800

**Applicant(s)**

VISSER, ANTHONY

**Examiner**

MICHAEL SAFARI

**Art Unit**

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 9/21/04

***Election/Restrictions***

Applicant's election with traverse of the species of Fig. 11 in the reply filed on May 12, 2009 is acknowledged. The traversal is on the ground(s) that 1) the special technical features are the particulars of the "flat plate" and the "supports" can be found in all claims and 2) that the search and examination of the entire application could be performed without serious burden. This is not found persuasive because 1) a reciting of the special technical feature within any or all claims is not a showing that the patently distinct embodiments share the same "special technical feature" and 2) the necessary manner of search for one of the inventions is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different subclasses of a class or classes or searching different electronic resources, or employing different search queries when searching electronic resources).

The requirement is still deemed proper and is therefore made FINAL.

Claims 7 and 10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species of the invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 12, 2009.

The information disclosure statement filed September 21, 2004 fails to fully comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because Applicant has submitted a German document Offenlegungsschrift 1658736 which does not

appear to correspond to that listed under Foreign Patent Documents as DE 1658736. It has been placed in the application file, but the information referred to therein, with respect to DE 1658736, has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

#### ***Specification***

The disclosure is objected to under 37 CFR 1.74 because of the following:  
reference character 35 is used to denote both a "pin" and a "plate".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-6 and 8-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 1, line 14, "the support surfaces" lacks antecedent basis within the claim. It is therefore, not clear as to what "the support surfaces" serves to define. Further, the

language within lines 14-15 of claim 1 appears vague and indefinite in that it is not clear as to what is being defined by "the support surfaces are all offset in the same direction relative to the recesses." It is not clear with respect to what the support surfaces are offset.

Claim 3, line 2, to what does "a plate" refer? Would this be the same as "a substantially rectangular flat plate" introduced within line 3 of claim 1?

Claim 8, it is not understood how more than one support is connected to "a profile" particularly with respect to the elected embodiment of Fig. 11. Also, how does "a profile" extend parallel to an end wall of the carrier when "a profile" forms part of the claimed carrier? In other words, is "a profile" in addition to the claimed carrier?

Claim 9, line 2, "the locking elements" lacks antecedent basis within the claim. It is therefore, not clear as to what "the locking elements" serves to define.

Claim 10, though withdrawn from consideration), line 2, "the locking elements" lacks antecedent basis within the claim. It is therefore, not clear as to what "the locking elements" serves to define. Further, it is not understood how the locking elements are formed by brackets fixed to the L-profile particularly with respect to the elected embodiment of Fig. 11.

Claim 11, line 2, to what does "a plate" refer? Would this be the same as "a substantially rectangular flat plate" introduced within line 3 of claim 1?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-6, 8-13, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Barefoot 2,747,748.** Barefoot discloses, Figs. 1, 3, and 6 for example,, a carrier comprising: a substantially rectangular flat plate 10; and supports 13 extending transversely of the flat plate from short sides of the flat plate for supporting the carrier in a stack of carriers, with interspacing for the growing material, wherein: the supports extend upward from the fiat plate; under each of the supports, a recess, (formed by the outer surface of each or both of 24 against which support 13 rests), is arranged in the carrier for receiving a support 13 of an underlying carrier, whereby the carrier is also nestable during return transport or storing empty carriers with less space taken up by the carriers than in the stack; adjacently to the recesses, the carrier is provided with a support surface, (top of 11), for supporting underlying carriers; and the support surfaces are all "offset in the same direction relative to the recesses".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barefoot 2,747,748 in view of Fleetwood 2,803,369.**

To have formed the rack of Barefoot from galvanized steel thus producing a durable rack assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Fleetwood which teaches forming stacked rack units of galvanized steel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL SAFAVI whose telephone number is (571)272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Safavi/  
Primary Examiner, Art Unit 3637

M. Safavi  
July 20, 2009